

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-971V

Filed: April 23, 2018

UNPUBLISHED

MARY JANE DE LA PENA,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Leah VaSahnja Durant, Law Offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On July 20, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) following receipt of her September 22, 2016 influenza (“flu” vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On March 23, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On April 23, 2018, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$100,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award. Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$100,000.00 in the form of a check payable to petitioner, Mary Jane De La Pena.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MARY JANE DE LA PENA,

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Petitioner,

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**SECRETARY OF HEALTH AND
HUMAN SERVICES,**

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Respondent.

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No. 17-971V

CHIEF SPECIAL MASTER

NORA BETH DORSEY

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

The Court issued a Ruling on Entitlement on March 23, 2018. Based upon the evidence of record, respondent proffers that petitioner should be awarded \$100,000.00, which represents compensation for past and future pain and suffering. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that petitioner be awarded a lump sum payment of \$100,000.00 in the form of a check payable to petitioner. Petitioner agrees.

Respectfully submitted,

CHAD A. READLER

Acting Assistant Attorney General

¹ Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

C. SALVATORE D’ALESSIO
Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

GABRIELLE M FIELDING
Assistant Director
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/s/ DEBRA A. FILTEAU BEGLEY
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Dated: April 23, 2018